



Enterprise Agreements

Enterprise agreements set out the conditions of employment between employers and employees. This fact sheet outlines the type of agreements that can be made and how they should be made.

TYPES OF AGREEMENTS

The *Fair Work Act 2009* (FW Act) regulates the following types of agreements:

- single-enterprise agreements
- multi-enterprise agreements
- greenfields agreements.

SINGLE-ENTERPRISE AGREEMENT

Single-enterprise agreements are the most common form of enterprise agreement.

A single-enterprise agreement is made between an employer or two or more single-interest employers, and a group of employees who will be covered by the agreement.

Single-interest employers operate together in a joint venture or common enterprise, or are related companies.

Other employers, such as franchisees, may bargain as single-enterprise employers if Fair Work Australia (FWA) authorises them to do so.

MULTI-ENTERPRISE AGREEMENT

A Multi-enterprise agreement is an enterprise agreement made between two or more employers that are *not* single-interest employers and a group of employees who will be covered by the agreement.

Employers may choose to bargain together for a multi-enterprise agreement in which case no authorisation from FWA is needed.

Employers and/or employees bargaining for a multi-enterprise agreement cannot take protected action.

GREENFIELDS AGREEMENT

A Greenfields agreement is a single-enterprise or a multi-enterprise agreement that relates to a genuine new enterprise and is made with one or more relevant unions. Such an agreement could be made to cover a genuine new project which does not yet have any employees.

CONTENT OF AGREEMENTS

All types of enterprise agreements must:

- pass the better off overall test
- not exclude the National Employment Standards
- contain a term about settling disputes

- not include any unlawful terms or designated outworker terms
- specify a nominal expiry date of not more than four years
- include a flexibility term that allows for individual working arrangements
- include a term requiring consultation about major workplace changes.

Under the better off overall test FWA must be satisfied that each of the employees to be covered by the agreement are better off overall than under the relevant modern award.

BARGAINING REPRESENTATIVES

All employees are entitled to nominate a bargaining representative to negotiate on their behalf during the agreement making process.

Unions entitled to represent members employed at the site become bargaining representatives for each member unless the employee chooses to appoint another person.

AGREEMENT MAKING

There is no longer any need to initiate a bargaining period as part of the agreement making process. However, bargaining must be carried out in good faith and FWA has the power to make orders in relation to bargaining conduct.

Industrial action in respect of single enterprise agreements cannot be taken before the nominal expiry date.

The process of making an enterprise agreement is as follows:

- once bargaining is initiated, the employer must notify all employees of their right to have a bargaining representative
- after the last employee is notified, at least 21 days must pass before voting on the agreement can take place
- at least seven days before the vote, the employer must ensure that the employees have access to the agreement
- an enterprise agreement is made when a majority of employees who cast a valid vote approve the agreement.

A greenfields agreement is made when it has been signed by each employer and each relevant employee organisation.

Enterprise agreements must be submitted by a bargaining representative to FWA for approval.

PENALTIES

During the process of agreement making, parties must avoid conduct that breaches the FW Act or the *Building and Construction Industry Improvement Act 2005* (BCII Act), including:

- coercion to make, not to make, to vary or extend the nominal expiry date, or to terminate an agreement
- employer discrimination between union and non-union members in connection with negotiations for an enterprise agreement
- contravening a bargaining order.

A breach of the FW Act may incur:

- penalties of up to \$6,600 for an individual and up to \$33,000 for an organisation
- compensation for loss or damage suffered by an employee.

A breach of the BCII Act may incur:

- penalties of up to \$22,000 for an individual and \$110,000 for a body corporate
- compensation for loss or damage suffered by an employee

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



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